

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
WIRTJERS TRUCKING, INCORPORATED Sac County, Iowa	NO. 2008-AQ- 46 NO. 2008-SW- 30

TO: Wirtjers Trucking, Incorporated
Patricia Wirtjers, Registered Agent
3111 270th Street
Sac City, Iowa 50583

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Wirtjers Trucking, Incorporated (Wirtjers) for the purpose of resolving the air quality and solid waste disposal violations which occurred during the demolition and disposal of two commercial buildings in Newell, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bryon Whiting, Field Office #3
Iowa Department of Natural Resources
1900 Grand Avenue - Gateway North Mall
Spencer, Iowa 53101
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a

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violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

Wirtjers neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. On December 20, 2007, Marion Burnside, DNR asbestos coordinator, received an anonymous complaint regarding the demolition of two commercial buildings located in Newell, Iowa. On December 20, 2007, Mr. Burnside contacted the City of Newell (the City) and spoke to the City Clerk, Melinda Buchholz. Ms. Buchholz informed Mr. Burnside that the City had hired Wirtjers to demolish two buildings located at 209 South Fulton and 213 South Fulton in Newell. Ms. Buchholz stated the City did not inspect the buildings for asbestos containing material and did not notify the DNR of the demolition.

2. On December 20, 2007, Marion Burnside then contacted Wirtjers and spoke to Jason Kreft. Mr. Kreft stated that Wirtjers did not inspect the buildings for asbestos containing material and did not notify the DNR of the demolition. Mr. Kreft stated Wirtjers paid Jacob Nielsen \$100.00 per load to dump the demolition debris at Mr. Nielsen's farm located at 5995 185th Avenue near Newell. Mr. Burnside informed Mr. Kreft that the debris needed to be inspected by a licensed asbestos inspector and under no circumstances could the debris pile be burned. Mr. Burnside told Mr. Kreft that he needed to inform Mr. Nielsen not to burn the pile. Following the conversations with Mr. Kreft and Ms. Buchholz, Mr. Burnside contacted DNR Field Office 3 regarding the situation. Field Office 3 estimated the total gross building area of the two buildings that had been demolished to be 3,829 square feet.

3. On December 31, 2007, Doug Weir of Ames Environmental spoke to Mr. Burnside and stated that on December 26, 2007 he had gone to the Nielsen farm site with a Wirtjers' representative and the demolition debris had been burned. Mr. Weir stated when he arrived that he could not inspect the material because it was still smoldering.

4. On January 2 and January 16, 2008, Mr. Burnside conducted investigations at the demolition locations in Newell and at Mr. Nielsen's farm. Mr. Burnside confirmed that an inspection had not occurred; that a notification had not been submitted; that the buildings had been demolished and deposited at Mr. Nielsen's farm; and that the debris had been burned. Since the buildings were not tested for asbestos prior to demolition and the debris was burned before testing could occur, the demolition waste is considered asbestos containing material. In addition to the building debris, Mr. Burnside observed tires and metal band remnants in and near the burn pile.

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5. February 8, 2008, DNR issued a Notice of Violation letter to Wirtjers for the asbestos violations in connection with the demolition and disposal of the commercial buildings in Newell. The violations included failure to inspect, failure to notify, failure to have a trained supervisor on site, and failure to follow the waste disposal requirements. Wirtjers was required to obtain the services of an asbestos abatement contractor and properly remove the debris from the demolition locations in Newell and from Mr. Nielsen's farm. The debris was required to go to the landfill as asbestos containing material.

6. On February 26, 2008, DNR issued a Notice of Violation letter to Wirtjers for violations of the open burning and solid waste disposal regulations in connection with the burning of the demolition debris. Wirtjers was notified the matter was being referred for further enforcement.

7. Over the course of the spring and summer 2008, the City has worked with Wirtjers and Mr. Nielsen in developing an agreement for the cleanup of the debris from Mr. Nielsen's farm.

IV. CONCLUSIONS OF LAW

Wirtjers neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Wirtjers demolished two commercial buildings and allowed the debris to be burned because it had been improperly disposed of. The above facts demonstrate noncompliance with this provision.

3. 567 IAC 23.2(3)"j" provides an exemption for the controlled burning of a demolished building by a city provided a number of requirements are met, including but not limited to conducting a thorough asbestos inspection prior to the demolition and submitting a notification to the DNR at least 10 days prior to the demolition and at least 30 days prior to the controlled burn. The above facts do not constitute an exempt burning because the City did not conduct a thorough asbestos inspection prior to demolishing the buildings and did not submit notifications to the DNR prior to the demolition or the burning.

4. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and

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renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

5. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the demolition of the buildings. The above facts indicate a violation of this provision.

6. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the buildings. The above facts indicate a violation of this provision.

7. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

8. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The demolition debris from the buildings was taken to Mr. Nielsen's farm and burned rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Wirtjers agrees to do the following:

1. Wirtjers shall work with the City and Mr. Nielsen to hire a trained asbestos contractor and remove all of the remaining debris at the demolition site in Newell and at Mr. Nielsen's property in accordance with the asbestos and solid waste disposal regulations. This removal shall be completed within 30 days following the soybean harvest in the field surrounding Mr. Nielsen's property;
2. Wirtjers shall submit receipts of all the landfill tickets to DNR Field Office 3; 1900 North Grand; Spencer, Iowa 53101 within 10 days of completion of the project; and
3. Wirtjers shall pay a penalty of \$5,000.00 in accordance with the following payment schedule:

\$2,500.00 due December 15, 2008 and
\$2,500.00 due December 15, 2009.

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VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$5,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - Failure to follow the proper solid waste disposal regulations by the improper open burning and disposal of the buildings has allowed Wirtjers to save time and money. Additionally, Wirtjers saved time and money by not properly inspecting the buildings for asbestos and notifying the DNR of the demolition. However, any economic benefit the Wirtjers may have initially received will be negated by the costs of the final cleanup. Therefore, no economic benefit is being assessed.

Gravity of the Violation - Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition and burning of the structures. These violations threaten the integrity of the regulatory program because compliance with the open burning, asbestos, and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above considerations, \$3,000.00 assessed for this factor.

Culpability - Wirtjers has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Based on the above considerations, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Wirtjers. For that reason, Wirtjers waives the rights to appeal this order or any part thereof.

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VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 7 day of
October, 2008.

PAT Wirtjers, pres.
WIRTJERS TRUCKING, INCORPORATED

Dated this 18 day of
Sept., 2008.

Barb Stock (Con 10-6 Sac County); Kelli Book; Marion Burnside; Bryon Whiting (FO3);
Dan Stipe (FO4); EPA; VILC, VILC.1, and VILC.4